

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN D. CERQUEIRA,

Plaintiff,

V.

AMERICAN AIRLINES, INC.,

Defendant.

CIVIL ACTION NO.: 05-11652 WGY

**AMERICAN AIRLINES, INC.'S MOTION TO RECONSIDER DENIAL OF ITS
REQUEST TO SCHEDULE PRETRIAL CONFERENCE AND TRIAL READY DATES
FOR DATES SUBSEQUENT TO APRIL 2, 2007 DUE TO TRIAL CO-COUNSEL'S
PREGNANCY**

American Airlines, Inc. (“American”) hereby requests that the Court reconsider its ruling denying its request to schedule pretrial conference and trial conference dates to dates subsequent to April 2, 2007 due to trial co-counsel’s pregnancy. As grounds therefore, the Defendant states as follows:

1. Amy Cashore Mariani will serve as trial co-counsel for American at trial of the above-entitled action.
2. Ms. Mariani is pregnant with a due date of December 31, 2006. As evidenced by certification from her physician, attached to the Joint Affidavit of Michael A. Fitzhugh and Amy Cashore Mariani, attached hereto as Exhibit 1, she is expecting to deliver by repeat c-section on or about December 28, 2006.
3. Ms. Mariani has conducted most of the fact and all of the expert discovery on behalf of American, including, but not limited to, the deposition of plaintiff's expert Douglas Laird, coordinating the expert reports of defendant's experts

Martin J. Kelly and John Beardslee, the depositions of plaintiff's treating physicians Richard S. Faulk and Barry Blumenthal, and the depositions of the three flight attendants aboard the flight in question on December 28, 2003. *See* Exhibit 1.

4. At trial, Ms. Mariani is expected to handle most, if not all, issues related to experts, to the treating physicians, and to the flight attendants who are expected to testify, including direct and cross-examinations. Ms. Mariani also will prepare and argue many of American's pretrial motions, including, but not limited to, *Daubert* motions. *See* Exhibit 1.
5. Ms. Mariani likely will be unable to participate in some or all of the pretrial and trial matters involved with this case if the pretrial conference and trial ready dates are not set subsequent to April 2, 2007, when she expects to return from maternity leave.
6. Unless the Court allows this motion for reconsideration and schedules the pretrial and trial ready dates for a date subsequent to Ms. Mariani's return from maternity leave on April 2, 2007, American will be prejudiced in several material ways. First, American will not have the benefit of being represented by the attorney who has handled this action, including discovery and motions practice, on a day-to-day basis. Second, American will incur additional, and unnecessary, attorney fees in connection with bringing in another attorney on critical issues, such as expert testimony into this matter, at a late date. The estimated pretrial and trial ready dates were established in December of 2005, many months before Ms. Mariani learned she was pregnant. *See* Exhibit 1.

7. This extension is not being requested for the purposes of delay, but rather for medical reasons over which neither counsel nor American have control.

WHEREFORE, American Airlines, Inc. respectfully requests that this Honorable Court:

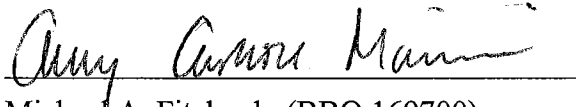
- I. Allow the instant Motion; and
II. Grant such other and further relief as is just and proper.

Respectfully submitted,

Dated: October 25, 2006

AMERICAN AIRLINES, INC.

By its Attorneys,



Michael A. Fitzhugh, (BBO 169700)

Amy Cashore Mariani, (BBO #630160)

FITZHUGH, PARKER & ALVARO LLP

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Boston, MA 02110-1727

(617) 695-2330

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on October 25, 2006.


Amy Cashore Mariani

CERTIFICATE OF CONFERENCE

I hereby certify that on October 20, 2006, I forwarded a copy of the instant motion via electronic mail to plaintiff's counsel, Michael Kirkpatrick, requesting his comments or a conference to discuss any issues brought by Plaintiff with regard to this submission on or before the close of business on Monday, October 23, 2006. As of the date of this filing, I had not heard back from opposing counsel in this regard.


Amy Cashore Mariani

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN D. CERQUEIRA,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

CIVIL ACTION NO.: 05-11652 WGY

**JOINT AFFIDAVIT OF MICHAEL A. FITZHUGH AND AMY CASHORE MARIANI IN
SUPPORT OF AMERICAN AIRLINES, INC.'S MOTION TO RECONSIDER DENIAL
OF ITS REQUEST TO SCHEDULE PRETRIAL CONFERENCE AND TRIAL READY
DATES FOR DATES SUBSEQUENT TO APRIL 2, 2007 DUE TO
TRIAL CO-COUNSEL'S PREGNANCY**

Michael A. Fitzhugh and Amy Cashore Mariani hereby depose and state that:

1. Michael A. Fitzhugh and Amy Cashore Mariani are counsel of record for American Airlines, Inc. in connection the above-captioned action.
2. Ms. Mariani will serve as trial co-counsel, and not as second chair, for American at trial of this matter.
3. Ms. Mariani is pregnant with a due date of December 31, 2006. See Exhibit A, Letter from Jennifer Daman, M.D., attached hereto.
4. As evidenced by certification from her physician, Ms. Mariani is expected to deliver by repeat c-section on or about December 28, 2006. Exhibit A.
5. Throughout the course of this litigation, Mr. Fitzhugh and Ms. Mariani have both participated in significant case events. Ms. Mariani has conducted most of the fact and all of the expert discovery on behalf of American, including, but not limited to,

the deposition of plaintiff's expert Douglas Laird, coordinating the expert reports of defendant's experts Martin J. Kelly and John Beardslee, the depositions of plaintiff's treating physicians Richard S. Faulk and Barry Blumenthal, and the depositions of the three flight attendants aboard the flight in question on December 28, 2003. Mr. Fitzhugh has conducted the plaintiff's deposition and defended five depositions of American employees.


6. At trial, Ms. Mariani is expected to handle most, if not all, issues related to experts, to the treating physicians, and to the flight attendants who are expected to testify, including direct and cross-examinations. Ms. Mariani also will prepare and argue many of American's pretrial motions, including, but not limited to, *Daubert* motions.
7. Ms. Mariani likely will be unable to participate in some or all of the pretrial and trial matters involved with this case if the pretrial conference and trial ready dates are not set subsequent to April 2, 2007, when she expects to return from maternity leave.
8. Unless the Court allows this motion for reconsideration and schedules the pretrial and trial ready dates for a date subsequent to Ms. Mariani's return from maternity leave on April 2, 2007, American will be prejudiced in several material ways. First, American will not have the benefit of being represented by the attorney who has handled this action, including discovery and motions practice, on a day-to-day basis. Second, American will incur additional, and unnecessary, attorney fees in connection with bringing in another attorney on critical issues, such as expert testimony into this matter, at a late date. The estimated pretrial and trial ready dates were established in December of 2005, many months before Ms. Mariani learned she was pregnant.

9. While counsel are aware of and understand this Court's general position with regard to trial continuance, this extension of time is being requested for medical reasons over which neither counsel nor American have control.

WHEREFORE, American Airlines, Inc. respectfully requests that this Honorable Court:

- I. Allow the instant Motion; and
- II. Grant such other and further relief as is just and proper.

Signed under the pains and penalties of perjury this 25th day of October, 2006.


Michael A. Fitzhugh

Signed under the pains and penalties of perjury this 25th day of October, 2006.


Amy Cashore Mariani

EXHIBIT A



Tufts-New England Medical Center



The principal teaching hospital for
Tufts University School of Medicine

Department of Obstetrics &
Gynecology
Tel: 617-636-1583
Fax: 617-636-3295

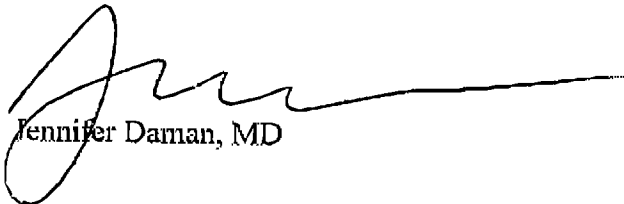
Jennifer Daman, MD
Assistant Professor

October 23, 2006

To Whom It May Concern:

Ms. Amy Mariani, date of birth 09/21/70, is receiving prenatal care @ Tufts-New England Medical Center on an outpatient basis. Her estimated delivery date is 12/31/06. She is scheduled for caesarian section on December 26, 2006. She will need 12 weeks recovery time. Do not hesitate to call my office if you need any more information.

Sincerely Yours,



Jennifer Daman, MD

Tufts-New England Medical Center
Established 1796

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Tufts-NEMC #022
Boston, Massachusetts 02111